APPENDIX A

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 74-1029

LEROY CALLAHAN,
Plaintiff-Appellant,

v.

H. M. PRICE, *et al.*,
Defendants-Appellees.

Dec. 13, 1974

Before COLEMAN, CLARK and RONEY, Circuit Judges.

RONEY, Circuit Judge:

Leroy Callahan, a white, nontenured school principal in Leake County, Mississippi, after three one-year contracts as principal and seven one-year contracts as assistant principal, was not reemployed for the school year 1973-74. He asserts that the nonrenewal of his contract is violative of his First and Fourteenth Amendment rights to freedom of speech and association and to his right to be free from arbitrary and capricious governmental action. He first claims that the community opposition which triggered the refusal of the Board to rehire him was grounded on his unpopular enforcement of court-ordered desegregation. He then asserts that in any event, community opposition alone, whatever its basis, is an insufficient ground for nonrenewal of his contract absent a showing that the school or his performance as principal is undermined. Finally he argues that nonrenewal under these circumstances makes the governmental ac-

tion arbitrary and capricious, and otherwise violates his constitutional rights.

We affirm the district court's decision, not by deciding the serious legal questions posed by Callahan, but on the ground that the findings of the district court are not clearly erroneous and the facts do not support Callahan's claim that he was dismissed for constitutionally impermissible reasons. The key to any possible relief claimed by plaintiff lies in the reason for the community opposition to him and its effect. In a case of this kind, the burden of proof is on the plaintiff to show that the conduct of the school authorities was unconstitutional.

The facts found by both the school board after extensive hearings, and the district court after evidentiary hearings and examination of the transcript before the school board, show that the plaintiff failed to prove that the community opposition was based on his enforcement of court-ordered desegregation. The record also shows that he failed to prove that the Board was wrong in finding that his nonrenewal was in the best interests of the school and the students.

Callahan brought this action against the Superintendent of Education and the members of the Board of Education of Leake County, Mississippi, pursuant to 42 U.S.C.A. § 1983 and § 2000d and the First and Fourteenth Amendments. He sought injunctive and other relief requiring the defendants to rehire him, to reimburse him all back pay, and to pay him actual and punitive damages.

Throughout the course of this litigation Callahan has argued that his dismissal was based on his stand in favor of compliance with a federal court order requiring integration of Leake County schools. The Superintendent and the Board take the position that the best interests of the school necessitated that Callahan not be rehired because

of community opposition, which resulted primarily from his attempt to remove a popular football coach. This differing interpretation of the underlying reason for the failure to rehire Callahan makes it necessary for us to develop the factual background of this case in detail.

The Edinburg Attendance Center was one of the last schools in Leake County to experience integration, finally admitting its first black student in January 1970 after the ruling of this Court in United States v. Hinds County School Board, 417 F.2d 852 (5th Cir. 1969), cert. denied, 396 U.S. 1032, 90 S.Ct. 612, 24 L.Ed.2d 531 (1970). From the beginning there was difficulty between the white students and the newly arrived black faculty members, described by witnesses as attempts on the part of the white students to "run-off" the black teachers. At the time the school was first integrated Callahan served as an assistant principal, a position which he had occupied for seven years. With the beginning of the 1970-71 school term, Callahan became principal of the Edinburg Attendance Center under the first of three successive one-year written contracts.

According to Callahan, it was at this time that he decided to "back his black teachers" and to comply with both the letter and spirit of the court order unitizing the Leake County school system. He set about to assure equal participation in all of the school's activities by placing blacks on the cheerleader squad in representative numbers, by allowing blacks to participate fully in homecoming and fund raising activities, and by placing blacks on the local board of trustees. These actions incurred the wrath of several of the white patrons of the school. Callahan was referred to in derogatory terms, signs were painted along the route he traveled to his farm each day, and, on occasions, threats were passed along to him and to his friends and supporters.

In spite of this opposition to Callahan he was reemployed for the 1971-72 school term. During this year Callahan's unpopularity was exacerbated by his failure to recommend certain techers for reemployment for the 1972-73 term, particularly a popular football coach and assistant principal, John McCloud. Under the provisions of Section 37-9-17 of the Mississippi Code of 1972, the attendance center principal is given discretion and responsibility to initiate recommendations for teaching personnel within his attendance center. Callahan had accused McCloud of pilfering $5.19 from the school activity fund. McCloud was very popular with the students and in the community. In response to Callahan's action, petitions began to circulate and meetings were held in support of the football coach. Certain students at Edinburg Attendance Center threatened and attempted a walk-out in support of the football coach, but were persuaded to return to their classrooms by McCloud.

McCloud and several of the other teachers not recommended for reemployment requested a hearing before the Board of Education upon the charges asserted against them by Callahan. This request was granted and the Board resolved the charges in favor of the teachers. Both Callahan and McCloud were then requested to appear before the Board which expressed to both its concern that, in view of the circumstances then apparent, it would not be in the best interest of Edinburg Attendance Center for either of them to remain. Neither Callahan nor McCloud chose to resign and the Board subsequently entered into one-year written contracts for the 1972-73 school term with each of them. Thus the 1972-73 school term began at Edinburg Attendance Center with Callahan serving as principal and with McCloud serving as a teacher, instead of assistant principal.

During the fall of 1972, Superintendent Price became aware that this undercurrent of discontent in the Edin-

burg Attendance Center was increasing. Petitions advocating Callahan's removal were circulated and, on occasion, Price and members of the Board had to go to the school in efforts to calm the student body and faculty.

Superintendent Price determined that there was in fact substantial opposition to Callahan and that it would not be in the best interest of the school to recommend Callahan as attendance center principal for the 1973-74 school term. Section 37-9-15 of the Mississippi Code of 1972 gives the Superintendent discretion and responsibility to initiate recommendations for the employment of attendance center principals. Price wrote Callahan a letter on January 18, 1973, advising him that he would not be recommended and giving the reasons for his decision:

> As you know, I am greatly concerned about the educational system of Leake County, including Edinburg Center, it's staff, pupils and patrons.
>
> I have given the situation that exists there very much thought and consideration, and have decided that it is for the best interest of the school and the children that I should not recommend you to the Leake County School Board for re-employment as Principal, after your present contract expires, for the 1973-74 school term.
>
> My reason for not recommending you is that under the conditions that exist at the Edinburg Center, tensions are so high among patrons, teachers and students, that you cannot have the type of school and education that the pupils of the community are entitled to and deserve.
>
> This decision was made entirely for the best interest of the school and for no other reasons.

Callahan then brought this suit in April 1973 at a time when he was still serving as attendance center principal at Edinburg. The defendants immediately obtained from the district court a stay for the purpose of conducting a board hearing. The Board thereupon gave Callahan a full hearing as to the reasons for the nonrenewal of his contract. He was given a statement of the reason for the Superintendent's action, the names and nature of the expected testimony of the witnesses to be called by the Superintendent, and an opportunity to cross-examine the Superintendent's witnesses and to present evidence of his own. It is not questioned that this hearing afforded Callahan all of the procedural due process contemplated by the Fourteenth Amendment. Ferguson v. Thomas, 430 F.2d 852, 856 (5th Cir. 1970); *cf.* Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir.), cert. denied, 368 U.S. 930, 82 S.Ct. 368, 7 L.Ed.2d 193 (1961).

The Board then filed its findings and conclusions with the district court. The Board was explicit in its findings as to why Callahan was not rehired for the 1973-74 school term:

> There was and is substantial opposition among the parents of children attending the Edinburg Attendance Center to the re-employment of Mr. Leroy Callahan as attendance center principal for the 1973-1974 scholastic year which begins July 1, 1973; and, that this substantial opposition to Mr. Leroy Callahan as attendance center principal is not in the best interests of the public school at Edinburg Attendance Center; and, that these are the two sole reasons why Mr. H. M. Price, as Leake County, Mississippi, Superintendent of Education, did not recommend Mr. Leroy Callahan to the Leake County, Mississippi, Board of Education for the position as attendance center principal at Edinburg Attendance Center for the 1973-1974 scholastic year. We find that there is

very little, if any, racial hostility in the Edinburg school community directed toward Mr. Leroy Callahan; and, that this was not a factor in the decision of Mr. H. M. Price not to recommend Mr. Leroy Callahan as attendance center principal.

We further find that the administration of Edinburg Attendance Center by Mr. Leroy Callahan on a fully unitary non-discriminatory basis was not the reason for the substantial opposition to Mr. Callahan in the Edinburg Attendance Center community.

Callahan was allowed to complete his contract which expired by its own terms on June 30, 1973.

A school board hearing procedure which is conducted in accordance with the dictates of procedural due process is entitled to great weight. If substantial evidence appears to support the school board's action that should end the matter. The court should never substitute its judgment for that of the Board. Toups v. Authement, 496 F.2d 700 (5th Cir. 1974); Thompson v. Madison County Board of Education, 476 F.2d 676 (5th Cir. 1973). On this appeal, our review is limited to examining the record to ascertain whether there was substantial evidence to support the finding of the Board and the district court that the nonrenewal of Callahan's contract was due to substantial community opposition which was unrelated to his efforts to comply with court-ordered desegregation.

At the Board's hearing, Callahan had the burden of proving that he was not rehired for constitutionally impermissible reasons. Fluker v. Alabama State Board of Education, 441 F.2d 201 (5th Cir. 1971). He attempted to meet the burden by presenting evidence that the Superintendent's decision was based on community opposition resulting from Callahan's full faith compliance with federal court-ordered desegregation. The Superintendent

countered with evidence showing that the decision not to rehire was grounded on community opposition resulting from Callahan's disagreements with football coach McCloud. The Board resolved this conflict in favor of the Superintendent, and like the district court, we agree that there was substantial evidence to support its findings.

In its report to the district court the Board noted that it had not

> . . . attempted to analyze the testimony of each witness and find separately findings of fact as to the testimony of each witness. There were numerous witnesses in this lengthy hearing and much of the testimony was contradictory in nature. This simply points up and emphasizes our finding that there is substantial opposition to Mr. Callahan in the Edinburg school community and that Mr. Callahan is the center of the controversy.

Likewise we do not feel it would be helpful, or that it is necessary, to pull from the record testimony supporting the Board's and district court's findings. We agree with plaintiff that there was some opposition to him which was racially motivated. Considering that the Edinburg Attendance Center was first integrated in 1970, this opposition was not surprising or unusual. There had been such opposition since Callahan became principal in 1970, yet this opposition did not prevent Superintendent Price from recommending that Callahan be reemployed in 1971 and in 1972. It was only after the McCloud controversy in the spring and fall of 1972 that Price decided the community opposition to Callahan was such that it would not be in the best interest of the school for Callahan to be reemployed for the 1973-74 school term. The record contains substantial evidence to support the findings that, despite such racially motivated opposition, Superintendent Price's decision not to reemploy Cal-

lahan was based on considerations and opposition unrelated to any efforts of the principal to comply with court-ordered desegregation.

Plaintiff simply failed to satisfy his burden of proving that the community opposition and the Superintendent's decision not to reemploy him was due to his interest in maintaining an integrated school. On appeal, plaintiff contends that even if this be so, the Superintendent's decision was arbitrary and capricious and in violation of the Fourteenth Amendment absent a showing that his performance as principal of Edinburg Attendance Center was undermined as a result of the opposition. He points to a good and improved school record during his principalship. Callahan argues that there was no showing that the opposition had any effect on his ability to run the school and therefore, defendants' decision that he not be rehired was wholly unsubstantiated and ran afoul of his right to substantive due process. Unless plaintiff can show that the nonrenewal of his contract was for a constitutionally impermissible reason, however, there is no basis for us to invalidate the Superintendent's action. The finding by the Board that it was not in the best interest of the school to rehire Callahan removes from the decision the arbitrary and capricious characteristics asserted by plaintiff. We have continually reiterated the view that matters of school policy are best resolved in the local community and within the institutional framework of the school system. Ferguson v. Thomas, *supra*. The findings and conclusions of the district court are supported by substantial evidence and are not clearly erroneous under F.R.Civ.P. 52(a).

Affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 74-1029

LEROY CALLAHAN,
Plaintiff-Appellant,

v.

H. M. PRICE, *et al.*,
Defendants-Appellees.

May 16, 1975

* * * *

Appeal from the United States District Court for the Southern District of Mississippi.

ON PETITION FOR REHEARING

(Opinion December 13, 1974, 5 Cir. 1974, 505 F.2d 83.)

Before COLEMAN, CLARK and RONEY, Circuit Judges.

PER CURIAM:

In the petition for rehearing it is asserted that the panel misapprehended the chronology of some of the facts in this case. The response to the petition concedes the point. The mistakes reflected in the panel opinion occurred through dependence upon the appellant's brief for a recitation of the facts. The facts were not there set forth in chronological order. The chronology apparently seemed of no particular importance to the ap-

pellant, except on petition for rehearing. We conclude that the exact chronology is of no decisional consequence. The hearings before the school board were extensive and involved numerous witnesses with continual switching of time frame in questions and answers. The evidentiary hearing before the district court was partially repetitious of facts covered in the hearings before the Board.

The parties now agree that the following portion of the panel opinion, 505 F.2d at 85, is chronologically incorrect in that these events did not occur during the 1970-71 year as indicated in the paragraph immediately preceding the following quotation:

> He set about to assure equal participation in all of the school's activities by placing blacks on the cheerleader squad in representative numbers, by allowing blacks to participate fully in homecoming and fund raising activities, and by placing blacks on the local board of trustees. These actions incurred the wrath of several of the white patrons of the school. Callahan was referred to in derogatory terms, signs were painted along the route he traveled to his farm each day, and, on occasions, threats were passed along to him and to his friends and supporters.
>
> In spite of this opposition to Callahan he was reemployed for the 1971-72 school term.

The following events occurred during the fall months of the 1972-73 school year, *after* rather than *before* the run-in with the popular football coach in the 1971-72 school year:

> (1) Placing blacks on cheerleader squad in representative numbers;
>
> (2) Allowing blacks to participate fully in homecoming and fund raising activities;

(3) Placing blacks on local board of trustees;

(4) Callahan referred to in derogatory terms;

(5) Signs painted along the route Callahan traveled to his farm;

(6) Occasional threats passed along to Callahan, his friends and supporters.

The panel opinion is in apparent error also for indicating that Superintendent Price recommended Callahan for reemployment in 1971 and 1972. He was in fact recommended for these two terms of employment by the Leake County superintendent of education, the predecessor to Superintendent Price, who did not take office until January 1972. Superintendent Price then recommended Callahan for reemployment for the 1972-73 school term. This recommendation was made in January 1972. At that time Price testified that he was unaware of any opposition to Callahan, which "bloomed out" later in the spring of 1972 when petitioner Callahan failed to recommend football coach Johnny McCloud and three other teachers for rehiring for the school year 1972-73.

A review of the record convinces us, however, that the facts, when correctly apprehended, although not as strong as originally recited in the panel opinion, nevertheless support the conclusion that we cannot hold to be clearly erroneous the finding of the trial court that, despite the fact that some of the opposition to Callahan was racially motivated, Superintendent Price's decision not to reemploy Callahan was based on considerations and opposition unrelated to any efforts of the principal to comply with court-ordered desegregation. Although the original panel opinion may have misapprehended the correct chronology, the district court did not. In the view of the panel, on the first chronology, Callahan's unpopularity because of his racial activities was exacerbated by the Coach McCloud incident and the failure

to recommend him for reemployment. In the correct view of the facts, the unpopularity because of the run-in with the football coach and other teachers was exacerbated by his activities in relation to the black students. One hand washes the other. The smooth working operation of a school is of utmost importance to the education of its students, particularly in a school attempting to implement court-ordered desegregation. As we concluded in the original opinion filed in this case, the findings and conclusions of the district court are supported by substantial evidence and are not clearly erroneous under F.R.Civ.P. 52(a).

The petition for rehearing is denied and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition for rehearing en banc is denied.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1974

No. 74-1029

D.C. Docket No. CA-73-J-74 "N"

LEROY CALLAHAN,
Plaintiff-Appellant,

versus

H. M. PRICE, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Mississippi

Before COLEMAN, CLARK and RONEY, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

December 13, 1974

Issued as Mandate: May 27, 1975

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 73J-74(N)

LEROY CALLAHAN,
Plaintiff

vs.

H. M. PRICE, THE LEAKE COUNTY, MISSISSIPPI BOARD OF EDUCATION, *et al.*,
Defendants

JUDGMENT

This cause came on for hearing before the Court on July 10, 1973 on Motion of the plaintiff, Leroy Callahan, for a Preliminary Injunction against the defendants herein alleging that his contract of employment as principal of the Edinburg Attendance Center, Leake County, Mississippi, was arbitrarily and capriciously terminated and "for the unlawful reason that he vigorously enforced Court ordered desegregation at his school". The plaintiff alleges violations of the due process and equal protection clause of the Fourteenth Amendment to the Constitution of the United States and seeks, inter alia, preliminary and permanent injunctions requiring defendants to offer him a contract of employment as principal of Edinburg Attendance Center for the 1973-74 school year and thereafter under the same terms and conditions as contracts offered to other principals in this school district and heretofore offered the plaintiff in previous years, for reinbursement of all back-pay and other allowances and privileges lost by him, and for actual and punitive damages in the amount of $2,000.00.

This Court entered an order on May 14, 1973, directing the defendant Board of Education to hold a hearing in this matter and requiring that all pleadings be held in abeyance pending this hearing and a subsequent issuance of findings and conclusions by the Board. This hearing was held on May 29, 1973, and Findings and Conclusions of the Leake County, Mississippi, Board of Education were filed herein on July 9, 1973.

On June 28, 1973 this Court entered a Temporary Restraining Order prohibiting defendants from evicting the plaintiff from his present residence, which is owned by the Leake County School District, and further maintaining the status quo until the hearing on plaintiff's Motion for a Preliminary Injunction could be heard on Tuesday, July 10, 1973. Pursuant to Rule 65(a)(2), F.R.C.P., and with the consent of all parties, this Court ordered the trial of this action on the merits advanced and consolidated with the hearing of the application for preliminary injunction.

This Court, having carefully examined all the evidence in this case, including the transcript of the hearing before the Leake County Board of Education, the Findings and Conclusions of this Board and the testimony of the witnesses appearing at the hearing held in this matter on July 10, 1973, finds and is of the opinion that the decision not to re-employ the plaintiff as principal of the Edinburg Attendance Center for the scholastic year 1973-1974 was not based on any constitutionally impermissible ground but solely upon the determination by the Superintendent of Education of Leake County, Mississippi, Mr. H. M. Price, that there was in fact substantial opposition among the parents of students attending Edinburg Attendance Center to the re-employment of the plaintiff as school principal and that because of this substantial opposition, his re-employment as school principal would not be in the best interest of public schools at Edin-

burg Attendance Center. The Court finds that in failing to favorably recommend to the Leake County Board of Education the renewal of the plaintiff's contract, Superintendent Price was exercising the authority given to him under Mississippi law and that the decision not to rehire the plaintiff was not arbitrary or capricious.

Furthermore, this Court finds that although there was no due process requirement that the plaintiff be afforded a hearing by the Board inasmuch as he had no legitimate claim or entitlement to renewal of his contract but merely a unilateral or subjective expectation thereof, *Board of Regents* v. *Roth*, 408 U.S. 564 (1972), nevertheless, he was afforded a hearing before the Board of Education, as ordered by this Court, and this hearing afforded him all procedural due process contemplated by the Fourteenth Amendment.

Accordingly, it is the finding of this Court that the plaintiff is not entitled to a preliminary or permanent injunction requiring his re-employment, damages, attorney's fees or any other relief requested. Because it was necessary that a determination be made in this matter prior to the beginning of the school year this Court deems it appropriate that the Judgment be entered in this case at this time. Formal Findings of Fact and Conclusions of Law will be filed by the Court at a subsequent date.

Accordingly, it is hereby Ordered and Adjudged that the plaintiff herein, Leroy Callahan, be denied the relief sought, that the action be dismissed with prejudice and that the plaintiff and defendants each bear their own costs.

ORDERED AND ADJUDGED this 22nd day of August, 1973.

Biloxi, Mississippi

/s/ Walter L. Nixon, J.
WALTER L. NIXON, J.
United States District Judge

[Filed: August 22, 1973]

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 73J-74(N)

LEROY CALLAHAN,
Plaintiff

vs.

H. M. PRICE, THE LEAKE COUNTY, MISSISSIPPI BOARD OF EDUCATION, *et al.*,
Defendants

ORDER ON FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on for hearing before the Court on July 10, 1973, on Motion of the plaintiff for a Preliminary Injunction, the trial of this action on the merits having been advanced and consolidated with the preliminary injunction hearing. On August 22, 1973, this Court entered a four page Judgment in which the relief sought by the plaintiff, Leroy Callahan, was denied and the action was dismissed with prejudice. Although this Court indicated in this Judgment that formal findings of fact and conclusions of law would be filed at a subsequent date, this Court is of the opinion that the Judgment sufficiently sets forth the Court's findings of fact and conclusions of law.

Accordingly, the Judgment entered herein on August 22, 1973, containing this Court's factual findings and legal conclusions, shall be considered the Findings of Fact and Conclusions of Law of this Court.

ORDERED this the 27th day of September, 1973.

/s/ Walter L. Nixon, Jr.
United States District Judge

Biloxi, Mississippi

[Filed: October 4, 1973]

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 73J-74(N)

LEROY CALLAHAN,
Plaintiff

vs.

H. M. PRICE, THE LEAKE COUNTY, MISSISSIPPI BOARD OF EDUCATION, *et al.*,
Defendants

JUDGMENT

This cause came on for hearing before the Court on Motion of Plaintiff, Leroy Callahan, for a Preliminary Injunction, the trial on the merits having been advanced and consolidated with the hearing of the Application for a Preliminary Injunction.

Pursuant to the decision of the Court, entered August 22, 1973, and adopted herein by reference, in which this Court determined that the decision not to re-employ the Plaintiff as Principal of the Edinburg Attendance Center, Leake County, Mississippi, was not based on any constitutionally impermissible ground, that the Superintendent of Education was properly exercising the authority given them under Mississippi law and that the hearing before the Board of Education afforded the Plaintiff all procedural due process contemplated by the Fourteenth Amendment, and pursuant to the explanatory Orders of this Court entered October 4, 1973, and this date, it is hereby Ordered and Adjudged that the Plaintiff, Leroy Callahan, be denied the relief sought, that the

action be dismissed with prejudice and that the Plaintiff and Defendants each bear their own costs.

ORDERED AND ADJUDGED this 30th day of October, 1973.

/s/ Walter L. Nixon, Jr.
United States District Judge

Jackson, Mississippi

[Filed: October 30, 1973]

APPENDIX G

REPORT TO THE DISTRICT COURT OF THE FINDINGS AND CONCLUSIONS OF THE LEAKE COUNTY, MISSISSIPPI, BOARD OF EDUCATION

Pursuant to the written order of this Court dated May 14, 1973, directing that the Leake County, Mississippi, Board of Education afford the Plaintiff a timely hearing in accordance with all due process requirements on the question of the reasons for the failure of the Leake County, Mississippi, Board of Education to offer Leroy Callahan a contract of employment as attendance center principal for the 1973-1974 scholastic year, the Leake County, Mississippi, Board of Education caused written notice to be given to Mr. Fred L. Banks, Jr., attorney for the Plaintiff, Leroy Callahan, of an open meeting of the Leake County, Mississippi, Board of Education commencing at 9:00 o'clock A.M. on Tuesday, May 29, 1973, in the Circuit Court Room in the Leake County, Mississippi. The Leake County, Mississippi, Superintendent of Education gave written statement of the charges supporting his failure to recommend Leroy Callahan to the Leake County, Mississippi, Board of Education for the position of attendance center principal at the Edinburg Attendance Center for the 1973-1974 scholastic year together with a list of the witnesses proposed to be called in support of the charges and a summary of the expected testimony of the several witnesses.

The Leake County, Mississippi, Superintendent of Education stated and charged that he did not recommend Leroy Callahan to the Leake County, Mississippi, Board of Education for employment as attendance center principal of the Edinburg Attendance Center for the 1973-1974 scholastic year for the following reasons:

(a) There is overwhelming opposition by the people living within the geographic area served by the Edinburg

Attendance Center to the re-employment of the Plaintiff as attendance center principal; and,

(b) Considering this overwhelming opposition, the employment of the Plaintiff as attendance center principal would not be in the best interests of public schools at Edinburg Attendance Center.

The hearing was convened at the appointed hour on the date and at the place stated and the Board caused the proceedings to be taken in shorthand by a court reporter and subsequently transcribed.

After hearing and considering the oral testimony of the witnesses offered by the Leake County, Mississippi, Superintendent of Education and by Mr. Leroy Callahan together with documentary evidence introduced during the hearing, the Leake County, Mississippi, Board of Education finds therefrom the following findings and conclusions, to-wit:

FINDINGS OF FACT

Mr. Leroy Callahan was employed by the Leake County, Mississippi, Board of Education as attendance center principal for the Edinburg Attendance Center for three (3) successive one (1) year each written contracts commencing with the 1970-1971 scholastic year and ending with the 1972-1973 scholastic year. The most recent contract has been fully performed by both the Leake County, Mississippi, Board of Education and by Leroy Callahan and it has expired by its own terms on June 30, 1973. This was a written contract and contained no provisions for renewal within the contract. Mr. H. M. Price is the Leake County, Mississippi, Superintendent of Education and he was elected by popular vote of the electors of Leake County, Mississippi, and took office in January, 1972, and his term of office is for four (4) years. The

Leake County, Mississippi, school district is a county wide school district encompassing the entire area of Leake County, Mississippi.

Section 6282-05 of the Mississippi Code of 1942 Annotated requires the county superintendent of education to submit to the Board of education between January 15 and February 15 of each year his recommendations for the position of attendance center principal at the several attendance centers within the district; and, in accordance with state law Mr. H. M. Price did submit his recommendation to the Leake County, Mississippi, Board of Education that Mr. Leroy Callahan be appointed attendance center principal of the Edinburg Attendance Center for the scholastic year 1972-1973. The Leake County, Mississippi, Board of Education accepted this recommendation and thereafter approved the appointment of Mr. Leroy Callahan as attendance center principal at the Edinburg Attendance Center for the 1972-1973 scholastic year which ended on June 30, 1973. Mr. H. M. Price, as Leake County, Mississippi, Superintendent of Education, in the exercise of his professional judgment and discretion, did not recommend Mr. Leroy Callahan for the position of attendance center principal at the Edinburg Attendance Center for the scholastic year 1973-1974 that commences on July 1, 1973.

There was and is substantial opposition among the parents of children attending the Edinburg Attendance Center to the re-employment of Mr. Leroy Callahan as attendance center principal for the 1973-1974 scholastic year which begins July 1, 1973; and, that this substantial opposition to Mr. Leroy Callahan as attendance center principal is not in the best interests of the public school at Edinburg Attendance Center; and, that these are the two sole reasons why Mr. H. M. Price, as Leake County, Mississippi, Superintendent of Education, did not recommend Mr. Leroy Callahan to the Leake County,

Mississippi, Board of Education for the position as attendance center principal at Edinburg Attendance Center for the 1973-1974 scholastic year. We find that there is very little, if any, racial hostility in the Edinburg school community directed toward Mr. Leroy Callahan; and, that this was not a factor in the decision of Mr. H. M. Price not to recommend Mr. Leroy Callahan as attendance center principal.

We further find that the administration of Edinburg Attendance Center by Mr. Leroy Callahan on a fully unitary non-discriminatory basis was not the reason for the substantial opposition to Mr. Callahan in the Edinburg Attendance Center community.

We have not attempted to analyze the testimony of each witness and find separately findings of fact as to the testimony of each witness. There were numerous witnesses in this lengthy hearing and much of the testimony was contradictory in nature. This simply points up and emphasizes our finding that there is substantial opposition to Mr. Callahan in the Edinburg school community and that Mr. Callahan is the center of the controversy.

CONCLUSIONS

Based upon the findings of fact set forth above, the Leake County, Mississippi, Board of Education concludes that under the statutory law of the State of Mississippi that is contained in Section 6282-05 of the Mississippi Code of 1942 Annotated, it became the sole duty and responsibility of Mr. H. M. Price as Leake County, Mississippi, Superintendent of Education, within his sole professional judgment and discretion, to make a recommendation to the Leake County, Mississippi, Board of Education of his nominee for the position of attendance center principal at the Edinburg Attendance Center for the 1973-1974 scholastic year; that both the statutory

duty of the superintendent of education and the policy of this school district is that each year the superintendent of education must exercise his own independent professional judgment and discretion in the selection of and the recommendation of a nominee for the Edinburg Attendance Center principal's position; that in the independent exercise of his professional judgment and discretion Mr. H. M. Price, as Leake County, Mississippi, Superintendent of Education, did not recommend Mr. Leroy Callahan for employment as attendance center principal for the Edinburg Attendance Center for the scholastic year 1973-1974; that this action of Mr. H. M. Price in not recommending Mr. Callahan for the 1973-1974 scholastic year was justified under the facts we have found and his action was not arbitrary or capricious; that Mr. H. M. Price, as Leake County, Mississippi, Superintendent of Education, under the facts we have found, acted reasonably in his decision not to recommend Mr. Callahan for employment as Edinburg Attendance Center principal for the scholastic year 1973-1974; and, that there were no other reasons that prompted the action of Mr. H. M. Price.

Respectfully submitted on this the 2nd day of July, 1973.

THE LEAKE COUNTY, MISSISSIPPI,
BOARD OF EDUCATION

By: /s/ J. Palmer Brantley
President

ATTEST:

/s/ H. M. Price
Secretary

[Filed: July 9, 1973]